



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF F-I-, LTD.

DATE: SEPT. 24, 2018

APPEAL OF TEXAS SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a manufacturing and wholesale business, seeks to employ the Beneficiary as a director of accounting. It requests classification of the Beneficiary as a member of the professions holding an advanced degree under the second preference immigrant classification. Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). This employment-based immigrant classification allows a U.S. employer to sponsor a professional with an advanced degree for lawful permanent resident status.

The petition was initially approved. The Director of the Texas Service Center subsequently revoked the approval of the petition, concluding that the Petitioner did not establish its continuing ability to pay the proffered wage.

On appeal, the Petitioner submits additional evidence and asserts that the Petitioner is a disregarded entity for tax purposes; and that the Petitioner has established its ability to pay the proffered wage based on the tax returns of its parent company.

Upon *de novo* review, we will withdraw the Director's decision and remand the matter for further proceedings consistent with our opinion and for the entry of a new decision.

I. THE EMPLOYMENT-BASED IMMIGRATION PROCESS

Employment-based immigration generally follows a three-step process. First, an employer obtains an approved labor certification from the U.S. Department of Labor (DOL).¹ See section 212(a)(5)(A)(i) of the Act, 8 U.S.C. § 1182(a)(5)(A)(i). By approving the labor certification, the DOL certifies that there are insufficient U.S. workers who are able, willing, qualified, and available for the offered position and that employing a foreign national in the position will not adversely affect the wages and working conditions of domestic workers similarly employed. See section 212(a)(5)(A)(i)(I)-(II) of the Act. Second, the employer files an immigrant visa petition with U.S. Citizenship and Immigration Services (USCIS). See section 204 of the Act, 8 U.S.C. § 1154. Third, if USCIS

¹ The priority date of a petition is the date the DOL accepted the labor certification for processing, which in this case is June 5, 2014. See 8 C.F.R. § 204.5(d).

approves the petition, the foreign national applies for an immigrant visa abroad or, if eligible, adjustment of status in the United States. *See* section 245 of the Act, 8 U.S.C. § 1255.

II. REVOCATION OF A PETITION'S APPROVAL

After granting a petition, USCIS may revoke the petition's approval "at any time" for "good and sufficient cause." Section 205 of the Act, 8 U.S.C. § 1155. If supported by the record, a director's realization that a petition was erroneously approved may justify revocation. *Matter of Ho*, 19 I&N Dec. 582, 590 (BIA 1988).

Good and sufficient cause exists to issue a notice of intent to revoke (NOIR) where the record at the time of the notice's issuance, if unexplained or un rebutted, would have warranted the petition's denial. *Matter of Esteime*, 19 I&N Dec. 450, 451 (BIA 1987). Similarly, revocation is proper if the record at the time of the decision, including any explanation or rebuttal evidence provided by a petitioner, warranted a petition's denial. *Id.* at 452.

In this case, the Director stated that he issued the NOIR for two reasons: the Petitioner did not make a bona fide job offer to the Beneficiary, and a valid employment relationship had not been established with the Beneficiary. The Petitioner responded to both issues in its response to the NOIR. However, in his notice of revocation, the Director based his revocation solely on the basis of the Petitioner's inability to pay the proffered wage. The NOIR did not sufficiently detail the evidence of the record that, if unexplained and un rebutted, would warrant a denial based on the Petitioner's ability to pay the proffered wage. Thus, we will withdraw the Director's decision and remand the matter for issuance of a new NOIR.

On remand, the Director should review the Petitioner's appellate evidence and issue a new NOIR specifically detailing any evidence casting doubt on the Petitioner's ability to pay the proffered wage.

III. CONCLUSION

The NOIR lacked a specific statement of the evidence casting doubt on the Petitioner's continuing ability to pay the proffered wage from the priority date. Thus, the decision of the Director will be withdrawn. The matter is remanded to the Director for issuance of a new NOIR. Upon receipt of a response to the NOIR, the Director will review the entire record and enter a new decision.

ORDER: The decision of the Director is withdrawn. The matter is remanded for further proceedings consistent with the foregoing opinion.

Cite as *Matter of F-I-, Ltd.*, ID# 1592026 (AAO Sept. 24, 2018)